



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 3299-23
Ref: Signature Date

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Dear Petitioner:

This letter is in reference to your application for correction of his naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 9 May 2023. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies.

The Board carefully considered your request reconsideration for promotion to Lieutenant Commander (LCDR/O-4). The Board also considered whether promotion consideration by a Special Selection Board (SSB) was warranted. The Board considered your contention that you were passed for promotion in 1986 and 1987 despite numerous excellent evaluations while serving as a General Unrestricted Line (1100) Officer. The Board also considered your claim that the 1100 community consisted primarily of officers who never served in any other designator and that other candidates were unfairly held to a lower standard. The Board also considered your assertion that it was wrong of the promotion selection boards to review and include your reports from 1983 and 1984, which you claim were irrelevant as you held the designator 1160.

Regarding your contention your claim that the 1100 community consisted primarily of officers who never served in any other designator and that other candidates were unfairly held to a lower standard, the Board noted that selectees are selected on the basis of prior performance and potential for success at the next professional level. Moreover, pursuant to Title 10, U.S.C. Section 6389, the number of officers serving in each rank is established by law. Therefore, promotion is dependent on the occurrence of a vacancy in the next higher rank. Finally, the Board considered that because you had the benefit of two tours within your present community, you were in a better position regarding promotion. Thus, the Board determined your contention that you were erroneously passed over for

selection to LCDR/O-4 despite having excellent performance evaluations amounted to conjecture that the Board could not validate.

In regards to your contention that it was wrong of the promotion selection boards to review and consider your evaluation reports from 1983 and 1984, which you claim were irrelevant, the Board found no basis for the selection boards not to consider your prior performance evaluations. Relevant Navy policy states that unless administratively removed, all fitness reports will remain in a Servicemember's record and may be considered by future selection boards. The Board noted your previous request for removal of the aforementioned evaluation reports was denied by this Board. Thus, the Board affirmed that decision and determined that you were fairly and properly considered for promotion.

Regarding your request for reconsideration of promotion to LCDR/O-4, the Board noted that, pursuant to the Board for Correction of Military Records (BCMR) Memorandum dated 10 February 2015, it does not have the authority to remedy perceived errors or injustices by correcting records to show that an officer has been appointed to a certain grade when the officer has not been appointed to that grade by the President or Secretary of Defense. Thus, the Board determined that there was insufficient evidence in your record, and you provided none to support your claim that you be reconsidered for promotion to LCDR.

Finally, the Board determined that a SSB was not warranted. In this regard, the Board noted that SECNAVINST 1402.1B limits the approval of a SSB requests under Sections 628 and 14502 of Title 10 U.S.C. to cases where the promotion selection board is convened on or after 1 October 1996. Thus, the Board determined that your request does not meet the established criteria to conduct a SSB. Moreover, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require that you complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

5/15/2023

